

AMENDED IN ASSEMBLY APRIL 16, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 1181

Introduced by Assembly Member Calderon

February 23, 2001

An act to amend Sections 790.035 and 790.06 of, and to add Section 790.025 to, the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 1181, as amended, Calderon. Insurance: unfair practices.

Existing law prohibits a person from engaging in unfair methods of competition and unfair or deceptive acts or practices in the business of insurance. Existing law authorizes, at the discretion of the Insurance Commissioner, the imposition of a civil penalty not to exceed \$5,000 for each prohibited act and not to exceed \$10,000 for a willful act. Existing law requires the commissioner, upon a determination at a hearing that specified methods, acts, or practices are unfair or deceptive, to issue and serve a written report upon the person engaging in the prohibited method, act, or practice.

This bill would require the commissioner to make specific written findings of fact and conclusions of law when imposing a civil penalty upon a person for engaging in unfair methods of competition or unfair or deceptive acts or practices in the business of insurance. The bill would also require the commissioner to include written findings of fact and conclusions of law with the report that is issued and served upon a person for engaging in specified prohibited acts and, with respect to those acts, would define the terms “unfair” and “deceptive.”

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 790.025 is added to the Insurance Code,
2 to read:

3 790.025. ~~(a)~~—Unless otherwise defined in this article, the
4 following definitions shall apply when used to describe an act,
5 method, or practice *in proceedings brought by the commissioner*
6 *under Section 790.06*:

7 ~~(1)~~

8 (a) The term “unfair” means an act, method, or practice
9 lacking impartiality with respect to policy holders or applicants
10 that are identical in all respects, including authorized rating
11 criteria, acceptability, and claims experience.

12 ~~(2)~~

13 (b) The term “deceptive” means causing to accept as true that
14 which is false.

15 ~~(b) This section shall only apply to proceedings brought by the~~
16 ~~commissioner under Section 790.06.~~

17 SEC. 2. Section 790.035 of the Insurance Code is amended to
18 read:

19 790.035. (a) Any person who engages in any unfair method
20 of competition or any unfair or deceptive act or practice defined
21 in Section 790.03 is liable to the state for a civil penalty to be fixed
22 by the commissioner, not to exceed five thousand dollars (\$5,000)
23 for each act, or, if the act or practice was willful, a civil penalty not
24 to exceed ten thousand dollars (\$10,000) for each act. The
25 commissioner shall have the discretion to establish what
26 constitutes an act. However, when the issuance, amendment, or
27 servicing of a policy or endorsement is inadvertent, all of those acts
28 shall be a single act for the purpose of this section.

29 (b) In exercising discretion under subdivision (a), the
30 commissioner shall make specific written findings of fact and
31 conclusions of law when imposing any civil penalty for engaging
32 in an unfair method of competition or any unfair or deceptive act
33 or practice. The commissioner shall consider whether the method,
34 act, or practice was (1) inadvertent, (2) known to, or authorized or
35 ratified by an officer or management agent of the officer, (3)

1 caused injury or damage to another person, or (4) known to, and
2 not challenged by, the commissioner as a result of any prior filing
3 or proceeding under the insurance laws of this state.

4 (c) The penalty imposed by this section shall be imposed by and
5 determined by the commissioner as provided by Section 790.05.
6 The penalty imposed by this section is appealable by means of any
7 remedy provided by Section 12940 or by Chapter 5 (commencing
8 with Section 11500) of Part 1 of Division 3 of Title 2 of the
9 Government Code.

10 SEC. 3. Section 790.06 of the Insurance Code is amended to
11 read:

12 790.06. (a) Whenever the commissioner shall have reason to
13 believe that any person engaged in the business of insurance is
14 engaging in this state in any method of competition or in any act
15 or practice in the conduct of the business that is not defined in
16 Section 790.03, and that the method is unfair or that the act or
17 practice is unfair or deceptive and that a proceeding by him or her
18 in respect thereto would be in the interest of the public, he or she
19 may issue and serve upon that person an order to show cause
20 containing a statement of the methods, acts or practices alleged to
21 be unfair or deceptive and a notice of hearing thereon to be held
22 at a time and place fixed therein, which shall not be less than 30
23 days after the service thereof, for the purpose of determining
24 whether the alleged methods, acts or practices or any of them
25 should be declared to be unfair or deceptive within the meaning of
26 this article. The order shall specify the reason why the method of
27 competition is alleged to be unfair or the act or practice is alleged
28 to be unfair or deceptive.

29 The hearings provided by this section shall be conducted in
30 accordance with the Administrative Procedure Act (Chapter 5
31 (commencing with Section 11500) of Part 1 of Division 3 of Title
32 2 of the Government Code) and the commissioner shall have all the
33 powers granted therein. If the alleged methods, acts, or practices
34 or any of them are found to be unfair or deceptive within the
35 meaning of this article the commissioner shall issue and service
36 upon that person his or her written report so declaring. The report
37 shall be accompanied by specific written findings of fact and
38 conclusions of law consistent with the requirements of subdivision
39 (b) of Section 790.035.

1 (b) If the report charges a violation of this article and if the
2 method of competition, act or practice has not been discontinued,
3 the commissioner may, through the Attorney General of this state,
4 at any time after 30 days after the service of the report cause a
5 petition to be filed in the superior court of this state within the
6 county wherein the person resides or has his or her principal place
7 of business, to enjoin and restrain the person from engaging in the
8 method, act or practice. The court shall have jurisdiction of the
9 proceeding and shall have power to make and enter appropriate
10 orders in connection therewith and to issue any writs as are
11 ancillary to its jurisdiction or are necessary in its judgment to
12 prevent injury to the public pendente lite.

13 (c) A transcript of the proceedings before the commissioner,
14 including all evidence taken and the report and findings shall be
15 filed with the petition. If either party shall apply to the court for
16 leave to adduce additional evidence and shall show, to the
17 satisfaction of the court, that the additional evidence is material
18 and there were reasonable grounds for the failure to adduce the
19 evidence in the proceeding before the commissioner, the court may
20 order the additional evidence to be taken before the commissioner
21 and to be adduced upon the hearing in the manner and upon the
22 terms and conditions as to the court may seem proper. The
23 commissioner may modify his or her findings of fact or make new
24 findings by reason of the additional evidence so taken, and shall
25 file modified or new findings with the return of the additional
26 evidence.

27 (d) If the court finds that the method of competition
28 complained of is unfair or that the act or practice complained of is
29 unfair or deceptive, that the proceeding by the commissioner with
30 respect thereto is to the interest of the public and that the findings
31 of the commissioner are supported by the weight of the evidence,
32 it shall issue its order enjoining and restraining the continuance of
33 the method of competition, act or practice.

